

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Reporting Requirements for U.S. Providers of	)	IB Docket No. 04-112
International Telecommunications Services	)	
	)	
Amendment of 43 of the Commission's	)	
Rules	)	
To: The Commission		

**COMMENTS**

Cingular Wireless LLC ("Cingular") hereby submits its comments in response to the above-captioned *Notice of Proposed Rulemaking*.<sup>1</sup> For the reasons discussed herein, the Commission should eliminate annual Section 43.61 reporting requirements for CMRS providers offering international service via pure resale. Should the Commission instead continue to impose this obligation on CMRS providers, it should take a number of measures to provide more meaningful relief for carriers with insignificant market share.

**BACKGROUND**

The Commission's Part 43 international traffic data reporting requirements have undergone only minimal, marginal changes since the mid-1990's, yet today's international telecommunications marketplace bears little if any resemblance to the market as it existed then. As the Commission observed in March of this year, "the U.S.-international market has been undergoing changes in recent years" with "increasing competition on many U.S.-international

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<sup>1</sup>*Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of 43 of the Commission's Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, FCC 04-70 (rel. April 12, 2004) ("*NPRM*"), 69 Fed. Reg. 29676 (May 25, 2004).

routes accompanied by lower settlement rates and calling prices to U.S. customers.”<sup>2</sup> In light of these changes, the Commission exempted many international routes from its international settlements policy (“ISP”), even for settlement arrangements involving foreign carriers presumed to have market power.<sup>3</sup> The deployment of international facilities, innovations in the provision of international services, and technological changes, particularly voice over Internet protocol (“VoIP”), are changing the competitive landscape even further.<sup>4</sup>

As Cingular has noted, “[v]irtually all CMRS licensees resell international services simply to provide their mobile subscribers in the United States with the ability to place and receive international calls” and such service is largely ancillary to their “facilities-based provision of domestic mobile services.”<sup>5</sup> Cingular has demonstrated on numerous occasions that CMRS carriers hold only a paltry share of this increasingly competitive marketplace. For calendar year 2002, Cingular and Verizon Wireless – the nation’s two largest CMRS operators – reported only approximately 1% and 1.9% of total pure resale revenues, respectively, and Sprint PCS and T-Mobile each reported less than 0.5%.<sup>6</sup> Facilities-based carriers’ reported revenues, moreover, are almost *double* the total revenues reported by pure resale carriers. Importantly, the

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<sup>2</sup> *International Settlements Policy Reform/International Settlement Rates*, IB Docket Nos. 02-324 and 96-261, First Report and Order, FCC 04-53 (rel. Mar. 30, 2004)(“*ISP Reform Order*”).

<sup>3</sup> *Id.* at ¶ 27.

<sup>4</sup> See *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission’s Rules*, Notice of Proposed Rulemaking, IB Docket No. 04-112, FCC 04-70, ¶¶ 20-22 (rel. Apr. 12, 2004).

<sup>5</sup> Comments of Cingular Wireless in IB Docket No. 02-309, filed October 18, 2002, at 5 (“Cingular Biennial Review Comments”).

<sup>6</sup> See *2002 International Telecommunications Data*, Industry Analysis & Technology Div., Wireline Competition Bur., at Table D (March 2004) (“*2002 Data*”). For 2002, 56 U.S. facilities-based and facilities-resale carriers reported \$9.3 billion in billed revenue and 35.1 billion international service minutes, and 706 carriers reported that they provided IMTS on a pure resale basis, with \$4.9 billion in billed revenues for 27.4 billion minutes. See *id.* at 1.

Commission has already determined that CMRS carriers are unlikely to be able to distort traffic, particularly when unaffiliated with the underlying facilities-based carrier.<sup>7</sup>

The significant changes in the U.S. international telecommunications marketplace, and CMRS carriers' continued miniscule market share, clearly warrant further elimination of Part 43 reporting obligations – at minimum as to CMRS providers' provision of international services via pure resale. Above all, the Commission should keep in mind that the *NPRM* derived from Section 11 of the Act and the Commission's 2002 Biennial Regulatory Review proceeding. Thus, the Commission is bound to a straightforward principle: the more competitive the market, the less regulation is required. Many of the Section 43.61 rule and filing format changes proposed in the *NPRM*, however, would have just the opposite effect.

## **DISCUSSION**

### **I. IMPOSING ANNUAL SECTION 43.61 OBLIGATIONS ON CMRS PROVIDERS DOES NOT PROMOTE THE STATED OBJECTIVES OF THE RULE**

The Commission enumerates a number of reasons for imposing Section 43.61 reporting obligations on international carriers. Cingular does not dispute some of these stated policy objectives. None of these objectives, however, provide a rational basis for imposing the Section 43.61 requirements on CMRS providers offering international services via pure resale.<sup>8</sup> Given the nature of these stated objectives together with the state of the international

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<sup>7</sup> See 2000 Biennial Regulatory Review Amendment of Parts 43 and 63 of the Commission's Rules, Report and Order, 17 F.C.C.R. 11416, 11429 (2002) ("*Biennial Review Order*").

<sup>8</sup> See *Cellco Partnership d/b/a Verizon Wireless v. FCC*, 357 F.3d 88 (D.C. Cir. 2004). In previously upholding the rules, the court was persuaded by the Commission's argument that "information on minutes of use ... is important for monitoring trends in the industry." See *id.*, 357 F.3d at 102 (citing *Biennial Review Order*, 17 FCC Rcd at 11430). As discussed below, however, the data provided by CMRS providers reselling international services is largely superfluous. Thus, upon further scrutiny, there is clearly no rational connection between this obligation and the Commission's stated policy objectives.

telecommunications marketplace today, there is no “continuing need to collect information” from CMRS providers offering international service via pure resale arrangements.<sup>9</sup>

The Commission states that the annual Section 43.61 reports serve the following objectives: determining the competitiveness of services and markets, formulating rules and policies, “monitoring compliance with those rules and policies,” and “gaug[ing] the competitive effect of Commission decisions on the international market.”<sup>10</sup> The Commission’s most significant policy changes and enforcement decisions, however, appear to have arisen by virtue of information pertaining to facilities-based carriers’ data,<sup>11</sup> or by U.S. facilities-based carriers’ complaints to the Commission concerning foreign carrier practices.<sup>12</sup> To the extent that Section 43.61 pure resale data provided by CMRS providers has contributed to Commission policy, such data is largely superfluous as it merely reaffirms the trends and facts already evident in the data provided by facilities-based carriers, and thus cannot be reasonably viewed as meaningfully contributing to the Commission’s decisionmaking processes.

The Commission also states that the reports “provide a means by which to determine whether a U.S. carrier’s foreign-carrier correspondents are engaging in anti-competitive

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<sup>9</sup> See *NPRM* ¶ 23.

<sup>10</sup> See *id.* ¶ 24. As a related matter, the Commission posits that the information is necessary to “assess the effect of market changes on U.S. consumer prices for IMTS,” is “valuable in assessing the effect of our international telecommunications policies and the need for changes to those policies as the market changes and develops. *NPRM* App. C. ¶ 29.

<sup>11</sup> See *ISP Reform Order* at ¶ 11 n.22, ¶ 18 n.46 (describing percentage of U.S. outbound international minutes on benchmark-compliant rates). As pure resellers report aggregated, rather than route-specific, information, the data provided by CMRS providers could not have been utilized for this analysis.

<sup>12</sup> See *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc., For Prevention of “Whipsawing” On the U.S.-Philippines Route*, Order, 18 F.C.C.R. 3519 (Int’l Bur. 2003) (re-imposing ISP on U.S.-Philippines route), *aff’d on review* 19 F.C.C.R. 9993 (2004).

conduct.”<sup>13</sup> As noted above, however, the Commission has already determined that CMRS providers’ offering of international services via pure resale does not raise anticompetitive concerns. A CMRS carrier providing international service via pure resale has no correspondent relationship with facilities-based foreign carriers – only with the U.S. facilities-based carrier whose international service it resells. Exempting CMRS providers from this obligation therefore in no way undermines this Commission objective.

The Commission also asserts that the traffic and revenue information is used “to measure the progress of our accounting-rate benchmark policy and the ISP.”<sup>14</sup> As noted above, however, CMRS providers generally do not enter into correspondent or similar termination arrangements with foreign carriers. Again, it is route-specific information provided by U.S. facilities-based carriers that provides the relevant data for the purpose of meeting this stated purpose.<sup>15</sup> CMRS providers’ Section 43.61 data plainly does not serve this Commission objective.

Cingular does question the Commission’s assertion that “[i]t is important for us to see the differential effects of market changes on small and large users to determine whether we need to refine our policies to ensure that small users receive the benefits of the emerging competitive IMTS market.”<sup>16</sup> This is so, according to the Commission, because “[c]hanges in the IMTS market are likely to affect small and large users quite differently” and “[l]arge users have considerably more bargaining power in dealing with telecommunications carriers than do small users.”<sup>17</sup> Cingular is unaware of the Commission imposing similar reporting obligations on

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<sup>13</sup> See *NPRM* ¶ 25.

<sup>14</sup> *Id.* ¶ 26.

<sup>15</sup> See *In Re Petition of AT&T Corp.*, 15 F.C.C.R. 9684, ¶ 4 n.8 (Int’l Bur. 2000).

<sup>16</sup> See *id.* at App. C. ¶ 29.

<sup>17</sup> *Id.*

competitive CMRS providers and interstate wireline IXCs, yet there is no question that customers of all sizes enjoy the benefits of competition in those markets.<sup>18</sup> In addition, this objective seems extremely attenuated from the type of data to be provided by carriers.

Rather, the reason for *not* imposing such obligations on CMRS providers is self-evident. In “the emerging *competitive* IMTS market,”<sup>19</sup> consumers of all types will benefit from competition. As Chairman Powell has stated, “to the extent we must speculate about potential harm (to competition and consumers) we must, too, factor in more fully the potential disciplining effects of both real competition and potential competition.”<sup>20</sup> Where market shortcomings occur, the appropriate Commission response is already available: adjudicating complaints about unreasonable discrimination and practices under existing Section 208 and Part 1 procedures. It is unnecessary to micromanage – and thus, unnecessary to develop the means to micromanage – a competitive telecommunications marketplace.

## **II. THE COMMISSION SHOULD NOT INCREASE CMRS CARRIERS’ FILING BURDENS.**

Should the Commission continue to impose annual Section 43.61 reporting obligations on CMRS providers, it should take a number of measures to further ease the reporting burden. The Commission’s proposals to not require disclosure of total messages,<sup>21</sup> to eliminate distinctions

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<sup>18</sup> FCC Form 477, for example, does not require this information of CMRS providers, and the Commission has not proposed that such an obligation be imposed in its pending *NPRM*. See *Local Telephone Competition and Broadband Reporting, Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking and Order on Reconsideration, WC Docket No. 04-141 and CC Docket No. 99-301, FCC 04-81 (rel. Apr. 16, 2004).

<sup>19</sup> See *NPRM* at App. C ¶ 29 (emphasis added).

<sup>20</sup> *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Third Memorandum Opinion and Order, 14 F.C.C.R. 10816 (1999) (dissenting in part).

<sup>21</sup> *NPRM* ¶ 28.

between U.S. and off-shore U.S. points,<sup>22</sup> to update the filing format and instructions, and to allow electronic filing,<sup>23</sup> are long overdue. While such proposed rule changes are appropriately targeted at easing carriers' filing burdens, other proposed requirements will increase and complicate carriers' filing obligations with no corresponding public interest benefit.

**A. The Commission Should Adopt a Substantially Higher Revenue Threshold to Determine Which Carriers Must File Data for Pure Resale Services**

The Commission proposes “a \$5 million revenue threshold to determine which carriers must file traffic and revenue information for their pure resale services.”<sup>24</sup> Cingular agrees that a revenue threshold can serve the goal of “obtain[ing] an accurate picture of the international resale market such that [the Commission] can identify the likelihood of anti-competitive conduct” while minimizing filing burdens.<sup>25</sup> The proposed threshold, however, is unnecessarily low and will provide no relief for many carriers who pose no conceivable anticompetitive threat.

The \$5 million figure represents only a small fraction of a percent of total international pure resale revenues (an even smaller fraction of international revenues generally), and does not meaningfully reflect whether a carrier exercises market share sufficient to engage in anticompetitive conduct. More fundamentally, in a highly competitive marketplace in which facilities-based international carriers will continue to hold the bulk of market share, there is no rational connection between the \$5 million figure and the Commission's ability to monitor anticompetitive conduct.<sup>26</sup> Cingular instead suggests a threshold for resellers based on

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<sup>22</sup> *Id.* ¶¶ 29-31.

<sup>23</sup> *Id.* ¶¶ 76-78.

<sup>24</sup> *Id.* ¶ 35.

<sup>25</sup> *Id.* ¶ 34.

<sup>26</sup> This is particularly the case as to CMRS providers, for whom international service is largely incidental to their wireless service offerings.

approximately 10 percent of the most recently-released data for IMTS pure resale revenues – \$400 million.<sup>27</sup> While even a 10 percent share of total IMTS resale revenues is not nearly sufficient to raise anticompetitive concerns, such a threshold would nonetheless ensure that the reports apprise the Commission of significant new competitors, thereby enabling the Commission to meaningfully monitor marketplace developments. Finally, where an international carrier with lower revenues might raise competitiveness issues on a particular route due to foreign carrier affiliations, the existing quarterly reporting obligations for such carriers provide an adequate safeguard.

## **B. Simplification and Improvement of Schedule 5**

*Consolidated Filings.* According to the *NPRM*, “staff recommends that each entity that files a separate annual FCC Form 499-A should file separately a Schedule 1.”<sup>28</sup> While the Commission has acknowledged that many carriers consolidate their subsidiaries’ and affiliates’ Form 499 filings and proposes to allow this same degree of consolidation here, in this respect the current format, notwithstanding its flaws, is preferable to the proposed format.<sup>29</sup> Many CMRS providers offer international service via wholly-controlled subsidiaries and currently are not required to segregate data as the Commission proposes. Moreover, for many carriers, retrieving the international revenue and usage data for an individual Form 499 filer is simply infeasible. For these reasons, the Commission should simply allow carriers to submit a single filing with aggregated data, together with an attachment listing the relevant 499 Filer ID numbers and international Section 214 authorizations. To do otherwise would result in an unwieldy and

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<sup>27</sup> See *2002 Data* at Table D (reporting just over \$4.1 billion in total revenue from IMTS resale).

<sup>28</sup> *NPRM* at App. C. ¶ 13.

<sup>29</sup> See *id.* at App. C Schedule 1 (providing that “[e]ntities that make consolidated FCC Form 499 filings should make consolidated international traffic and revenue” filings).



unnecessary attempt to superimpose the Commission's universal service reporting regime -- which is designed in large part to support the rigors of a financial collection system -- on a fundamentally different reporting system with a fundamentally different purpose.

**Data Fields.** The Commission proposes that carriers submit information broken down “between small residential and business users,” speculating that carriers “should be able to derive much of the information from customer billings.”<sup>30</sup> This requirement would impose a draconian new obligation on CMRS providers, including Cingular, who currently do not “mark” their billing information in a manner that would make this information retrievable. Compelling competitive wireless carriers to distinguish between residential and business customers is a throwback to state and federal wireline monopoly rate regulation, which Congress and the Commission have deemed inapplicable to CMRS providers. The Commission suggestion that carriers “undertake periodic statistical studies to determine the relative percentage of total IMTS traffic that small and large users represent,”<sup>31</sup> would not reduce carriers' burden, as in reality such surveys are costly and time-consuming to prepare and execute. Thus, this suggestion merely would replace one significant burden with another.

Schedule 5 would also require a breakdown between end-user and carrier's carrier traffic. Some CMRS providers who offer their services for resale also enable resellers to purchase their international services, so it appears likely that this would impose a new burden on CMRS providers.<sup>32</sup> While the Commission's assertions concerning the growth of this market may be true as a factual matter, no explanation is provided as to how this data will serve the policy

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<sup>30</sup> *Id.* at App. C ¶ 30. The model Schedule 5 provided in the *NPRM* does not indicate the format in which this information would be provided.

<sup>31</sup> *See id.*

<sup>32</sup> As most CMRS pure resale carriers, including Cingular, do not have a direct relationship with foreign carriers, traffic reoriginated for foreign carriers is unlikely to be an issue.

objectives underlying the reports. In addition, while Cingular retrieves some wholesale international revenue data for its FCC Form 499 filings, Cingular currently cannot retrieve data regarding resellers' international minutes.<sup>33</sup> This proposal also would effectively require CMRS providers to substantially update their billing systems and should be rejected as well.

### CONCLUSION

For the foregoing reasons, the Commission should eliminate annual Section 43.61 reporting requirements for CMRS providers or, in the alternative, should take additional measures to provide more meaningful relief from this filing burden.

Respectfully submitted,

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<sup>33</sup> See *id.* at App. C ¶ 27. The Commission has already acknowledged that carriers distinguish between end user and carriers' carrier revenue on the Form 499 filings. This obligation applies to both facilities-based and resale carriers. Cingular submits that carriers' filing of Form 499-A data should provide the Commission adequate information.

## CERTIFICATE OF SERVICE

I, William R. Layton, hereby certify that on this 26th day of July, 2004, I caused copies of the foregoing "Comments" to be sent via electronic mail to the following:

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/s/ William R. Layton

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